

United States District Court
Northern District of Illinois
Eastern Division

JUSTIN E. MANLEY, individually)	FILED: JULY 3, 2008
and on behalf of all others)	08CV3808
similarly situated,)	JUDGE GOTTSCHALL
)	MAGISTRATE JUDGE MASON
)	EDA
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	Case No.
NATIONAL AUTO WARRANTY)	
SERVICES, INC. d/b/a DEALER)	
SERVICES,)	
)	
)	
Defendant.)	

Class-Action Complaint

Plaintiff Justin E. Manley, by his attorneys Green Jacobson & Butsch, P.C., and James X. Bormes, P.C., individually and on behalf of all others similarly situated, states:

Parties, Jurisdiction, and Venue

1. Manley resides in Cook County, Illinois, which is located in this judicial district.

2. Defendant National Auto Warranty Services, Inc. d/b/a Dealer Services ("Dealer Services") is a corporation organized under Missouri law. Its principal place of business is in St. Charles County, Missouri.

3. Manley is asserting claims under the Fair Credit Reporting Act, 15 U.S.C. § 1681n and § 1681o. This Court has subject-matter jurisdiction under 15 U.S.C. § 1681p, which grants district courts jurisdiction over all actions to enforce liability created under the Fair Credit Reporting Act.

4. Dealer Services is subject to the personal jurisdiction of this Court under Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure because Dealer Services would be subject to the jurisdiction of courts of general jurisdiction in Illinois.

5. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(c) because Dealer Services is subject to personal jurisdiction in this district. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

Allegations Common to All Claims

6. In approximately June 2008, Manley received two mailers from Dealer Services at his address in Cook County, Illinois. A copy of these mailer are attached as Exhibits 1 and 2, and adopted by reference.

7. In Exhibits 1 and 2, Dealer Services offers to sell Manley an automobile warranty.

8. The mailers state that Dealer Services accessed Manley's credit report.

9. Manley never authorized any credit-reporting agency to provide any information about him to Dealer Services.

10. Manley never authorized Dealer Services to obtain any information about him from any credit-reporting agency.

**Permissible Purposes for Use of Consumer Reports
Under FCRA**

11. The Fair Credit Reporting ("FCRA"), 15 U.S.C. §§ 1681 — 1681x, is a consumer-protection statute that regulates the activities of credit reporting agencies and users of consumer reports, and provides rights to consumers affected by the use of information that is collected about them.

12. The purpose of FCRA is to protect consumers' privacy by safeguarding the confidentiality of the information maintained by consumer reporting agencies. It states, "There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4).

13. FCRA protects consumers by prohibiting any release of consumer reports unless the release is for one of the permissible purposes set forth in 15 U.S.C. § 1681b.

14. The permissible purposes set forth in 15 U.S.C. § 1681b include, for the most part, transactions initiated by consumers. For instance, § 1681b(a)(3)

authorizes the use of consumer reports when the consumer has applied for credit, employment, or insurance.

15. One of the few circumstances in which FCRA allows financial institutions to use consumer reports absent consumers initiating them is when the recipient of the information extends the consumer a “firm offer of credit or insurance” 15 U.S.C. § 1681b(c)(1)(B)(i).

16. FCRA does not authorize the use of consumer reports to extend offers for just any product or service. It authorizes offers *only* for credit or insurance. 15 U.S.C. § 1681b(c)(1)(B)(i).

17. Count I of this lawsuit is not based upon the theory that Dealer Services failed to make a “firm offer” of credit or insurance, but rather, it is based upon the theory that Dealer Service failed to offer Manley credit or insurance at all.

**Count I — Violation of FCRA By Failing to Offer
Manley Credit or Insurance**

18. Manley adopts by reference all preceding allegations.

19. In its mailers, Exhibits 1 and 2, Dealer Services offered to sell Manley an automobile warranty.

20. Automobile warranties are not credit or insurance.

21. While not clear from the face of its mailer, Dealer Services offered Manley the option of paying for its automobile warranty with several payments.

22. The option of purchasing warranty service in several payments does not constitute an offer of credit under FCRA because Dealer Services was not offering to defer Manley's payment for the warranty service. Instead, Dealer Services required that warranty service be provided only after Manley paid for it.

23. In its mailers, Dealer Services did not offer Manley credit or insurance as required by 15 U.S.C. § 1681b(c)(1)(B)(i).

24. In its mailers, Dealer Services did not offer credit or insurance to Manley, despite it having been previously sued for the same conduct.

25. By failing to include an offer of credit or insurance in its mailers, Dealer Services negligently, willfully, and knowingly violated FCRA.

26. For negligently violating FCRA, under 15 U.S.C. § 1681o, Dealer Services is liable to Manley for the costs of this lawsuit, and reasonable attorney fees.

27. For willfully and knowingly violating FCRA, 15 U.S.C. § 1681n, Dealer Services is liable to Manley for damages of \$1,000, punitive damages, the costs of this lawsuit, and reasonable attorney fees.

FCRA's Authorized Conditions for Firm Offers

28. Because financial institutions seeking to extend pre-approved offers of credit or insurance access the consumers private and confidential information without the consumers' approval, FCRA requires that financial institutions must be extending firm offers of credit or insurance. A "firm offer" must be one that "will be honored." 15 U.S.C. § 1681a(l).

29. The Fair Credit Reporting Act expressly authorizes only three exceptions to the firm-offer requirement. That is, notwithstanding the requirement that offers be firm, lenders or insurers are authorized to condition a "firm offer" on either (1) the consumer meeting specific criteria as to creditworthiness or insurability, (2) the consumer continuing to meet the specific criteria used to select the consumer for the offer, or other information bearing on creditworthiness or insurability, or (3) the consumer furnishing any collateral that was a requirement for extension of the credit or insurance. 15 U.S.C. § 1681a(l)(1)-(3).

30. The Fair Credit Reporting Act does not authorize lenders or insurers to impose just any condition on its "firm offer." It only authorizes the three exceptions expressly enumerated in 15 U.S.C. § 1681a(l).

31. In Count II of this lawsuit, Manley alleges that Dealer Services violated FCRA because its offers to sell Manley automobile warranties were not

“firm” offers under FCRA because Dealer Services included conditions that FCRA does not authorize.

**Count II — Violation of FCRA by Including
Unauthorized Conditions on Purportedly “Firm
Offer”**

32. Manley adopts by reference all preceding allegations.

33. In its mailers, Exhibits 1 and 2, Dealer Services offered to sell Manley an automobile warranty.

34. Under 15 U.S.C. § 1681a(l), Dealer Services was authorized to condition a “firm offer” on any of three conditions. The only authorized conditions are the three conditions expressly enumerated at 15 U.S.C. § 1681a(l).

35. In the mailers, however, Dealer Services conditioned its offer to Manley on, among other things, the make, model, and mileage on Manley’s automobile.

36. These are not conditions authorized under 15 U.S.C. § 1681a(l).

37. By including these unauthorized conditions, the mailers did not constitute a “firm offer” as required by 15 U.S.C. § 1681b(c)(1)(B)(i).

38. By failing to include a “firm offer” in its mailers, Dealer Services negligently, willfully, and knowingly violated FCRA.

39. For negligently violating FCRA, under 15 U.S.C. § 1681o, Dealer Services is liable to Manley for the costs of this lawsuit, and reasonable attorney fees.

40. For willfully and knowingly violating FCRA, under 15 U.S.C. § 1681n, Dealer Services is liable to Manley for damages of \$1,000, punitive damages, the costs of this lawsuit, and reasonable attorney fees.

Class Allegations for Counts I and II

41. Manley brings Counts I and II against Dealer Services on behalf of a class consisting of all persons in Illinois whose consumer reports were obtained by Dealer Services without such persons' authorization, and who received mailers from Dealer Services similar to Exhibits 1 or 2 on or after July 3, 2006.

42. The proposed class is so numerous that joinder of all members is impracticable.

43. There are questions of law and fact common to the class. Common issues include:

- a. Whether Dealer Services violated FCRA when, after obtaining consumer reports in connection with transactions not initiated by consumers, offered to sell automobile warranties to the consumers instead of offering credit or insurance to the consumers;
- b. Whether Dealer Services violated FCRA by offering to sell automobile warranties conditioned upon the make, model, and mileage of the consumers' automobiles; and

- c. Whether Dealer Services's violations of FCRA were "willful" within the meaning of the statute.

44. Manley's claims are typical of the claims of the putative class members. All are based on the same legal and factual issues, and Manley has no interests that conflict with the interests of the other class members.

45. Manley will fairly and adequately represent the members of the putative class. Manley has retained counsel experienced in the prosecution of class actions, and Manley is committed to the vigorous prosecution of his claims.

46. A class action is superior for the fair and efficient prosecution of this claim. Class-wide liability is essential to cause Dealer Services to stop its illegal conduct. Many class members may be unaware that they have been victims of Dealer Services's illegal conduct. For example, many class members may have decided to discard the mailing as "junk mail," and therefore never learn that their credit reports have been accessed for illegal purposes. Furthermore, most individual class members have little ability to take action individually due to the significant costs attendant to litigation compared with the relatively small damages available to individual class members.

Jury-Trial Demand

As authorized by the Seventh Amendment to the Constitution of the United States and Rule 38 of the Federal Rules of Civil Procedure, Manley,

individually, and on behalf of the putative class, demands a trial by jury on all counts.

Demand for Judgment

Manley, individually, and on behalf of the putative class, requests that the Court enter judgment in favor of him and the class and against Dealer Services that:

- a. awards all damages available under the Fair Credit Reporting Act, including statutory damages of \$1,000 per violation, punitive damages, costs, and attorney fees;
- b. enjoins Dealer Services within Illinois from further violations of the Fair Credit Reporting Act; and;
- c. provides all other relief to which Manley or the class may be entitled under the evidence.

GREEN JACOBSON & BUTSCH, P.C.

/s/ James J. Simeri

David T. Butsch

James J. Simeri

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Attorneys for Plaintiffs

Registered Owner ID: 869-208-629

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Justin E Manley
1047 W 31st Pl
Chicago, IL 60608-6561

T74 PI

|||||

FINAL NOTICE

Call and Activate Today

1-800-725-4899

LAST CHANCE!
2007 PRICING EXTENDED
PLUS 0% FINANCING*

Dear Justin:

This letter is to inform you that this is your **FINAL NOTICE** to extend the **factory warranty coverage** on your vehicle. We have just introduced a **new affordable extended warranty program** that has been proven to **save customers like you thousands of dollars** in repair bills. You have been pre-selected and assigned **Owner ID Number 869-208-629** for this program.

Justin, call us immediately with the **exact miles** and **VIN Number** on your vehicle to discuss options and take advantage of our **current limited time offer**. Now everyone in America gets our **Last Chance for 2007 Pricing PLUS 0% financing** on programs activated today!

Due to the extreme nature of this program, we can make this offer available for **72 hours only**. You'll get the **guaranteed lowest price! Last Chance - 2007 Pricing Extended!**

Choose the coverage that's right for you:**Up to 6 years or 125,000 miles**

Gold Coverage	Platinum Coverage
Includes engine, transmission, transfer unit of 4x4, drive axle assembly, front and rear suspension, steering, air conditioning unit, electronics, seals, gaskets, brake system, electrical system, and much more.	"Bumper to bumper coverage" This plan includes all of the items in our Gold vehicle program plus practically all mechanical parts! (Exceptions are only normal wear and maintenance items.) This is the most comprehensive coverage available today.
Both coverages include: free 24 hr. roadside assistance , free rental car , and free 24 hr. emergency towing .	

This offer expires in 72 hours. Last Chance - 2007 Pricing only available at time of initial call.

***** Call Toll Free 1-800-725-4899*****

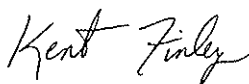
Business hours: Monday - Friday 7:30 a.m. to 7:00 p.m.; Saturday 9:00 a.m. to 2:30 p.m. (Central Time)

Best of All...

- You will get the **BEST** coverage - **Guaranteed!**
- No credit check required
- Claims are paid directly to your dealer--no concerns about reimbursement.


* Minimum down payment required.

Sincerely,



Kent Finley
Senior V.P.

NATIONAL AVERAGE REPAIR COSTS

Air Conditioning \$1,525.00		Steering \$1,350.00
Alternator \$825.00		Water Pump \$525.00
Main Engine Computer \$1,200.00		Wiper Motor \$655.00
Engine \$3,750.00		Power Window Motor \$685.00
Starter \$725.00		Transmission \$3,450.00

Actual repair costs may be higher or lower depending on your vehicle.

**WINNER: National Warranty Service Award**

You can choose to stop receiving "prescreened" offers of credit from this and other companies by calling toll-free 1-888-567-8688. See **PRESCREEN & OPT-OUT NOTICE** on the other side for more information.

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Ex. 1, pg. 1 of 2

- 1) LENGTH OF COVERAGE_____YEARS_____MILES
COVERED UNTIL_____
- 2) WHAT YOU PAY AT SHOP WITH WARRANTY(your deductible)_____
- 3) ☐ TOWING ☐ 24 HOUR ROADSIDE ASSISTANCE ☐ RENTAL CAR
- 4) NOW_____
- 5) YEARLY COST OF WARRANTY_____
- 6) TOTAL INVESTMENT_____
- 7) FINANCE RATE OF INTEREST_____
- 8) INITIAL INVESTMENT_____MONTHLY PAYMENTS_____

CUSTOMER SERVICE REPRESENTATIVE PHONE_____

NOTES

Calls may be recorded for quality purposes. Your use of our 800 number shall constitute your consent to have such calls recorded.
Dealer Services is not associated with any manufacturer or specific dealership.

Wisconsin Residents - Service contracts are administered by American Guardian Warranty Services, Inc. (American), Ultimate Warranty Corp. (Ultimate), Royal Administration (Royal), Mercury Select Mgt. Co (Mercury), or Vemeco, Inc. American, Ultimate, Royal, Mercury and Vemeco are not associated with any manufacturer or specific dealership.

Florida Residents - Coverage is provided by: American Guardian Warranty Services of Florida, Inc. #60116, 800 Roosevelt Road, Building E, Suite 300, Glen Ellyn, IL 60137. First Warranty Group of Florida #60115, 15906 Brookway, Huntersville, NC 28078, or Advantage Warranty Corp #AL00283, 14755 North Outer 40, Ste 400, St. Louis, MO 63017.

Nevada Residents - Contracts are administered by one of the following: American Guardian Warranty Services Inc., NV ID# 11434; Protective Administrative Services, Inc. dba Lyndon Administrative Services, NV ID# 2320; Ultimate Warranty Corp. NV ID# 12902; Vemeco, Inc. NV ID#16237.

PREScreen & OPT OUT NOTICE

This "prescreened offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria. If you do not want to receive prescreened offers of credit from this and other companies, call 1-888-567-8688 or visit the website at www.optoutprescreen.com; or write TransUnion Opt Out Request, PO Box 505, Woodlyn, PA 19094-0505 or Equifax Options at PO Box 740123, Atlanta, GA 30374-0123.

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|||||

Justin E Manley
1047 W 31st Pl Apt 1
Chicago, IL 60608-6562

T157 PI

|||||

LAST CHANCE!

2007 PRICING EXTENDED

PLUS 0% FINANCING*

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Justin, call us immediately with the **exact miles** and **VIN Number** on your vehicle to discuss options and take advantage of our **current limited time offer**. Now everyone in America gets our **Last Chance for 2007 Pricing PLUS 0% financing** on programs activated today!

Due to the extreme nature of this program, we can make this offer available for **72 hours only**. **You'll get the guaranteed lowest price! Last Chance - 2007 Pricing Extended!**

Choose the coverage that's right for you:

Up to 6 years or 125,000 miles

Gold Coverage	Platinum Coverage
Includes engine, transmission, transfer unit of 4x4, drive axle assembly, front and rear suspension, steering, air conditioning unit, electronics, seats, gaskets, brake system, electrical system, and much more.	"Bumper to bumper coverage" This plan includes all of the items in our Gold vehicle program plus practically all mechanical parts! (Exceptions are only normal wear and maintenance items.) This is the most comprehensive coverage available today.
Both coverages include: free 24 hr. roadside assistance , free rental car , and free 24 hr. emergency towing .	

This offer **expires in 72 hours**. **Last Chance - 2007 Pricing** only available at time of initial call.

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Business hours: Monday - Friday 7:30 a.m. to 7:00 p.m.; Saturday 9:00 a.m. to 2:30 p.m. (Central Time)

Best of All...

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Sincerely,

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WINNER: National Warranty Service Award



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Ex. 2, pg. 1 of 2

- 1) LENGTH OF COVERAGE_____YEARS_____MILES
COVERED UNTIL_____
- 2) WHAT YOU PAY AT SHOP WITH WARRANTY(your deductible)_____
- 3) ☐ TOWING ☐ 24 HOUR ROADSIDE ASSISTANCE ☐ RENTAL CAR
- 4) NOW_____
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